



Formal State Complaint Procedures

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North Carolina Department of Public Instruction
Exceptional Children Division

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Introduction

The Individuals with Disabilities Education Improvement Act (IDEA 2004) requires the State Educational Agency (SEA) to adopt written procedures for the investigation and resolution of any formal written complaint alleging that a public agency has violated a requirement of the IDEA. This document specifies the procedures used by the North Carolina Department of Public Instruction, Exceptional Children Division in the investigation and resolution of formal written complaints under the IDEA, the IDEA federal regulations, North Carolina General Statutes (GS) Article 9, Part 1A-1E, of Chapter 115C, and/or North Carolina Policies Governing Services for Children with Disabilities.

Purpose

The North Carolina Department of Public Instruction (NCDPI), Exceptional Children (EC) Division adopts the following complaint investigation procedures for the purpose of resolving complaints filed under the Individuals with Disabilities Education Improvement Act (IDEA), its corresponding federal regulations, Chapter 115-C, Article 9 of the NC General Statutes (GS), and North Carolina Policies Governing Services for Children with Disabilities (Policies). It is the responsibility of the NCDPI to resolve all complaints that meet the requirements of 34 CFR §300.153 and are filed with the EC Division in accordance with these procedures. It is the responsibility of the EC Division to monitor the completion of corrective actions issued as a result of a complaint investigation, as well as to take steps necessary to ensure compliance with corrective actions, including providing technical assistance and taking additional enforcement actions, as appropriate.

Distribution of State Complaint Procedures

The EC Division will ensure the State Complaint Procedures are available to parents, organizations, public agencies, and general public by posting them on the EC Division's website at <http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints>; providing a copy to each of the following organizations: Exceptional Children's Assistance Center, Family Support Network of North Carolina, Legal Aid of North Carolina, Disabilities Rights of NC, North Carolina Special Needs Federation, and The Children's Law Center; and mailing or emailing a copy to individuals and organizations upon request.

In compliance with federal law, the NC Department of Public Instruction administers all state-operated programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color, age, military service, disability, or gender, except where exemption is appropriate and allowed by law.

Authority

The IDEA Federal Regulations 34 CFR §300.151 et seq. located at <http://idea.ed.gov/>

North Carolina Policies Governing Services for Children with Disabilities (Policies)
<http://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities>

Article 9 of the NC General Statutes (GS) <http://www.ncga.state.nc.us/>

Filing a State Complaint

Any organization or individual, hereafter the “complainant(s),” including those from outside the State of North Carolina, may file a complaint.

Public agency includes the SEA, LEAs (including charter schools), and State-operated Programs (SOPs) that are responsible for providing education to children with disabilities. [NC 1500-2.27]

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received¹.

A written, signed mediation agreement, resolution agreement, and due process hearing decisions, under this paragraph, are enforceable by the SEA through the State complaint process in any State court of competent jurisdiction, or in a district court of the United States.

Required Information

- A statement that a public agency has violated a requirement of the IDEA (Part B) or North Carolina legal requirements;
- The facts on which the statement is based;
- The signature and contact information for the complainant (mailing address, telephone numbers, and email address);
- A description of the nature of the problem regarding the child, including specific facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

If alleging violations with respect to a specific child, include:

- The name and address of the residence of the child;
- The name of the LEA and school the child is attending; and

¹ The SEA may accept and resolve complaints regarding alleged continuous violations outside the one year time limit when extraordinary circumstances exist.

- The name of the school and/or LEA the student was attending if different at the time of the violation.

In the case of a homeless child or youth, include:

- Available contact information for the child/youth;
- The name of the LEA and school the child is attending; and
- The name of the school and/or LEA the student was attending if different at the time of the violation.

The complainant may use the State Complaint Form, located in Appendix A of this document and on the EC Division website at <http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints>

There is no requirement to use the model form; however, it contains all the required information. If the complainant does not use the form, he/she must include all the required information.

A signed, written complaint must be addressed and submitted to the:

Director of the Exceptional Children Division
Department of Public Instruction
6356 Mail Service Center, Raleigh, NC 27699-6356.

A signed, written complaint may also be submitted in person, by mail, by fax (919-807-3755), or by way of a PDF file attached to an email (state_ec_complaints@dpi.nc.gov).

The complainant must also send a copy of the complaint to the superintendent or lead administrator of the public agency named in the complaint.

The timeline begins once the investigator determines the sufficiency of the complaint.

Confidentiality

If the complaint is filed on behalf of an individual student and the complainant is not the student's parent (as defined by the IDEA), a written release of confidential information must be signed by the parent or the student (if rights have been transferred) and submitted to the investigator in order for the complainant to receive a copy of the letter of finding.

The complainant should provide the contact information for the parent(s), i.e., mailing address, telephone numbers, and email address.

Intake Process

The complainant and the public agency shall be provided with written notification (intake letter) that:

- Acknowledges receipt of the complaint;
- Identifies the issue(s) subject to an investigation;
- Identifies any issue(s) that is not subject to an investigation and why;
- Identifies the EC Division investigator assigned to investigate the complaint;
- Notifies both parties of the sixty (60) day timeline for investigating the complaint and issuing an investigation report;
- Encourages the parties to take steps to resolve the complaint as early as possible at the local level through informal means of dispute resolution;
- Advises the complainant and the public agency that the public agency has fifteen (15) calendar days after receiving the notice to develop and submit a proposal to resolve the complaint or engage in dispute resolution at the local level;
- Advises the complainant and the public agency of their right to request mediation, and includes the EC Division's mediation request form;
- Includes, for the complainant, a statement of the complainant's right to submit additional information² relevant to the identified issue(s), and the most recent copy of the *Parents Rights and Responsibilities in Special Education: Notice of Procedural Safeguards*; and
- Includes, for the public agency, a notice to submit its written response and requested documents within fifteen (15) calendar days of receiving the written notification, unless the fifteen (15) calendar days are extended by the EC Division because the parties are making progress toward early resolution. The documents and narrative must be received by the EC Division no later than the 15th calendar day.

The public agency named in the complaint is encouraged to review the issue(s) raised with appropriate school system personnel and provide a thorough written response to each issue that includes:

- The facts determined by the public agency;
- Any violation(s) identified and a proposal of corrective action(s) and/or corrective actions already taken; and
- Actions proposed or taken to provide compensatory services for any loss of services to the individual student and any other students affected by the violation(s).

Documents requested by the EC Division must be provided to the complaint investigator within the timeframes determined or the public agency must include in its written response an explanation as to why they were not provided.

Failure of the public agency to respond may result in a finding of noncompliance.

² If the complainant submits additional information identifying a new issue(s) of complaint, the EC Division reserves the right to process the issue(s) as a separate complaint and issue a new 60-day timeline.

A copy of the public agency's written response to the complaint is available upon request.

State Complaints and Due Process Petitions

If a complaint is filed with the same alleged violations raised in a due process petition, the EC Division must set aside any part of the complaint that is being addressed in the due process hearing. The complaint timeline will stop. When the due process case is closed, the EC Division will review the outcome of the due process and either:

- close the complaint and notify the parties in writing; or
- proceed with the investigation and issue an investigation report (letter of finding).

The EC Division will notify the parties in writing of the decision to set aside allegations, and which allegations, if any, will be resolved through the complaint process.

Any alleged violation in the complaint that is not part of the due process petition will be resolved in accordance with the following complaint procedures and applicable timelines.

If an alleged violation is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on the parties, and the EC Division will inform the complainant and public agency to that effect.

Insufficient Complaints

If the complaint does not meet the requirements outlined on page 3 of these procedures, the EC Division shall provide the complainant with written notification that the complaint has been determined to be insufficient and the additional information needed for the complaint to meet the requirements in the IDEA.

Systemic Complaints

A systemic complaint is a complaint that alleges that a public agency has a policy, practice, or procedure that is applicable to a particular group or category, or similarly situated, children. DPI is required to resolve any complaint that meets the requirements of NC 1501-10.3. Systemic complaints are expected to state the policy, practice, or procedure that constitutes the alleged violation and the facts upon which the alleged violation is based. A systemic complaint must contain sufficient facts to support the allegation.

If there are insufficient facts upon which to support the allegation, the complainant will be given an opportunity to provide additional information to substantiate the allegation. If the complainant is unable to provide the sufficient facts, the complaint will be dismissed.

Unlike an individual complaint, no proposed resolution of the problem is required. However, it is recommended that the complainant state the proposed resolution to facilitate resolving the complaint.

If the systemic complaint identifies specific children as part of a class, category, or similarly situated children, the EC Division will review all relevant information regarding the named children. If no violations are found involving the named children, no further action is required to resolve the complaint. However, if the EC Division identifies violations for the named children, the resolution must involve all the other children who are part of the class, category, or similarly situated children. The public agency named in the complaint will be responsible for notifying the parents of named children of the resolution.

Early Dispute Resolution

Upon receipt of a written request, the EC Division may grant a specific extension³ of the fifteen (15) calendar day timeline for the public agency to submit its response and supporting documentation if the parties are actively involved in the early resolution process.

If the public agency is unable to resolve the complaint through early dispute resolution, it must provide the investigator with a written response to the alleged violation(s) and the requested documentation within the fifteen (15) calendar day timeline or the extended timeline.

Early Dispute Resolution Mechanisms ⁴	
Informal	Formal
<p>State Complaint Problem-Solving Meeting</p> <p>Informal dispute resolution mechanisms are opportunities for the local education agency and the complainant to discuss concerns and develop an early state complaint problem-solving agreement.</p> <p><u>Key features:</u></p> <p>Early dispute resolution meetings do not necessarily require involvement of the IEP Team; however, early state complaint problem-solving agreements may require the IEP Team to meet and review and revise the student's IEP once the dispute has been resolved.</p>	<p>Mediation</p> <p>Formal dispute resolution provides the parties an opportunity to resolve issues with the assistance of a trained mediator.</p> <p><u>Key features:</u></p> <p>Mediation is a mutually agreeable process; therefore, both parties must agree to participate.</p> <p>Mediation typically occurs with key members of the local education agency and the complainant.</p> <p>While not required, the parties may choose to have legal representation during mediation.</p>

³ 300.151.(b)(1)(ii) allows an extension of the 60-day timeline if the parties are involved in alternative dispute resolution options, including mediation, if the complainant and public agency agree in writing.

⁴ The public agency must inform the investigator regarding the timing and status of all dispute resolution processes.

State Complaint Problem-Solving Agreements

State Complaint Problem-Solving Agreements must:

- Be in writing and signed by both parties;
- Include a detailed description of the resolution for each issue raised in the complaint;
- Include a statement that both parties agree all issues raised in the complaint were resolved; or
- Include a list of issues that remain unresolved and the options considered during the problem-solving meeting.

If all issues are resolved, include a written statement indicating the withdrawal of the complaint signed by the complainant.

The public agency shall submit the agreement to the investigator assigned to the case.

The EC Division will review the agreement and either:

- close the complaint and notify the parties in writing of its decision; or
- proceed with the investigation⁵ and issue a letter of finding at the end of the investigation timeline.

Mediation Agreements

Mediation Agreements must:

- Be in writing and signed by both parties;
- Include a detailed description of the resolution of each issue raised in the complaint;
- Include a statement that both parties agree all issues raised in the complaint were resolved; and
- Include a written statement indicating the withdrawal of the complaint signed by the complainant if all issues have been resolved.

If the parties resolve all the issues in the complaint through a formal mediation agreement and/or the parent agrees to withdraw the complaint, then the EC Division will close the complaint once the signed agreement is received.

Investigation Process

The investigator will conduct an independent review of all information and documents provided by the complainant and the public agency. During the investigation, the investigator may request additional documentation, conduct individual interviews, and/or conduct an on-site visit.

⁵ Investigations do not proceed if the resolution achieved by the parties was conducted through formal mediation.

Upon identifying any ancillary issue(s) during the investigation, the investigator shall notify either the EC Director/Coordinator and/or an EC Division consultant. The ancillary issue(s) shall be addressed through a monitoring process, a technical assistance activity, or be added to the complaint investigation and letter of findings. If the ancillary issue is added to the complaint, the complaint investigator will notify both parties in writing and each will have an opportunity to provide additional documentation within the time frame established by the investigator.

The sixty (60) day timeline may be extended if exceptional circumstances exist with respect to a particular complaint or the complainant and the public agency involved agree to extend the time to engage in mediation or other alternative means of dispute resolution. If an extension is necessary, the complainant and public agency shall be notified, in writing, by the EC Division.

Investigation Report

The investigation report, also known as a letter of finding, shall include:

- A statement of the issue(s) investigated; and
- Findings of fact and a conclusion for each issue investigated, including a statement of whether a violation of federal and state laws, regulations, and policies occurred, and the reasons for the conclusion.

If the public agency is found to be compliant with the applicable federal and state laws, regulations, and policies, the complaint file will be closed.

If the public agency is found to be noncompliant, the report shall include a corrective action plan that the public agency must implement to address the findings of noncompliance, including, but not limited to:

- Remediation for the denial of any services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student;
- Appropriate future provision of services for all students with disabilities impacted;
- Timelines for completing corrective actions;
- Documentation required for verifying the completion of the corrective action; and
- An EC Division contact person for technical assistance in completing the corrective actions.

The NCDPI EC Division will issue the investigation report (letter of finding) to the complainant and the superintendent or lead administrator of the public agency within sixty (60) days of the date the complaint was filed with the EC Division.

Corrective Action Plan

The public agency must report completion of the corrective action(s) to the complaint investigator by the date(s) set forth in the Corrective Action Plan (CAP). The date(s) may be extended at the discretion of the EC Division, but shall not exceed one (1) year from the issuance of the investigation report.

Following confirmation that any corrective actions requiring individual services for the student have been implemented, a letter closing the case will be sent to the superintendent (or lead administrator of the public agency) and the complainant, and a copy will be sent to the EC Director/Coordinator.

If the corrective actions and/or supporting documentation have not been received by the EC Division by the **final due date**, the continued non-compliance may result in one or more of the following actions being taken:

- Additional corrective action(s) assigned;
- Recommendation for targeted monitoring;
- Removal of the student(s) from the LEA's current headcount;
- Withholding of additional federal and/or state funding; and/or
- Other sanctions as appropriate.

Appendix A: State Complaint Form

FOR NCDPI USE ONLY			
Case Number	DRC	Date Found Sufficient	Report Due

This form has been developed to assist in filing a formal state complaint about possible violation of the IDEA, federal regulations, Article 9 of the NC General Statutes 115C, and/or the State Policies. Failure to provide all information may delay the complaint investigation or render it insufficient.

Submit the signed original to:
 William J. Hussey, Director- EC Division
 NC Department of Public Instruction
 6356 Mail Service Center ~ Raleigh, NC 27699-6356
 Email: state_ec_complaints@dpi.nc.gov
 Fax: (919) 807-3755

The federal regulations require that you submit a copy of the signed original to the Superintendent/Lead Administrator of the public agency.

☐ I confirm a signed copy was submitted to the public agency.

Name of Complainant:		Name of Student:	Student's Area of Disability:
Relationship to Student:		Birthdate of Student:	School Student Attends:
<i>If complainant is someone other than the child's parent, he/she must submit contact information for the parent and parental consent to release confidential information.</i>		Mailing Address:	School Student Attended When Alleged Violations Occurred:
Home Phone:	Cell Phone:	Email Address:	Public Agency (local school system, charter school, state operated program, etc.)
Complaint and Supporting Facts: Write a statement about the violation(s) of the IDEA, federal regulations, Article 9 of GS 115C, or NC Policies Governing Services for Children with Disabilities that occurred. Write the facts on which the above statement is based. Describe the nature of the problem of the child, including specific facts relating to the problem.			
Proposed Solution: Describe a proposed resolution of the problem to the extent known and available to you at this time.			
Early Resolution: A complaint investigation takes up to 60 days. You may work with the public agency to resolve the complaint at the local level. If both parties agree to mediation, the EC Division can appoint an impartial mediator to assist with resolving the complaint. A mediation request form will be sent upon receipt of the formal complaint.			
Signature of Complainant (Required): Please attach any other information and supporting documents, e.g., a copy of the student's current IEP and results of the most recent evaluation.			Date:

Appendix B: Sample – State Complaint Problem-Solving Agreement

State Complaint Problem-Solving Agreement

State Complaint Number: _____

Alleged Violation/Issue #1

Description of Outcome – Issue #1

☐ Resolved ☐ Not Resolved

Alleged Violation/Issue #2

Description of Outcome– Issue #2

☐ Resolved ☐ Not Resolved

☐ The parties agree that all alleged violations/issues raised in the state complaint have been resolved.

☐ The parties do not agree that all alleged violation/issues raised in the state complaint have been resolved.

☐ The complainant agrees to withdraw the state complaint.

☐ The complainant does not agree to withdraw the state complaint.

Complainant

Date

LEA Participant

Date

Other

Date

Other:

Date

Appendix C: Mediation Request Form

Student Information	
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Name:		Area(s) of Eligibility:	
Date of Birth:		School:	
Grade:		Local Education Agency(LEA):	

Background Information

Please provide the requested information. Enter "N/A" (Not Applicable) where appropriate.

Date(s) of previous mediations:		Date filed State Complaint:	
Nature of the dispute:			
<p>For parent, adult student, or interested party:</p> <p>Did you notify the LEA of this request for mediation? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, who was the person notified? _____ When? _____</p> <p>How was the person notified? _____</p>			
<p>For Local Education Agency (LEA):</p> <p>Did you notify the LEA of this request for mediation? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, who was the person notified? _____ When? _____</p> <p>How was the person notified? _____</p>			

Due Process Petition

Complete this section only if Due Process has been requested.

Case Number:		Date of expedited hearing request:	
Date of Due Process request:			
<i>Regulations permit both the parent and LEA to agree that mediation will be used instead of a resolution session or may be the outcome of the resolution session. Please initial below if both parties agree to mediation. **The Resolution Meeting Form must be included with this request.**</i>			
Parent (initials):		LEA Representative (initials):	

Contact Information

Must include names and contact information for both parties. Missing information may delay the process.

LEA Representative		Parent/Guardian	
Name:		Name:	
Mailing Address:		Mailing Address:	
Phone Number:		Phone Number:	
Email Address:		Email Address:	
Attorney for LEA , if applicable:		Attorney for Parent , if applicable:	
Name:		Name:	
Mailing Address:		Mailing Address:	
Phone Number:		Phone Number:	
Email Address:		Email Address:	

Appendix D: Complaint Withdrawal Form

To: North Carolina Department of Public Instruction
Exceptional Children Division
6356 Mail Service Center
Raleigh, NC 27699-6356
Attn: William J. Hussey

Re: **Request to Withdraw Formal State Complaint**
Complaint Number: _____

I withdraw my request for the North Carolina Department of Public Instruction's investigation of the state complaint referenced above.

I understand that my withdrawing the complaint does not affect my right to request an impartial due process hearing or file another complaint in the future.

Complainant

Date